



THE ATTORNEY GENERAL OF TEXAS

PRICE DANIEL
ATTORNEY GENERAL

AUSTIN, TEXAS

October 19, 1949

**Hon. L. A. Woods
State Superintendent
Department of Education
Austin, Texas**

Opinion No. V-938.

Re: The legality of an independent school district which is not participating in the Foundation School Program purchasing school buses direct rather than through the Board of Control.

Dear Sir:

We refer to your inquiry attached to which is a letter addressed to you from the Superintendent of the Odessa Public Schools, which reads in part:

"The Board of Trustees of the Ector County Independent School District of Odessa, Texas, has requested me to write you regarding the purchase of buses, tires and tubes which the Board of Trustees is presently contemplating. . . . The Board does not desire to make these purchases through the Board of Control and feels that . . . Article 634 (B) is applicable only to school districts participating in the Foundation School Program. As you know, the Ector County Independent School District has been declared not eligible for such aid and is not participating in this program.

"In view of these facts, the Board of Trustees desires an opinion from the Attorney General . . . as to whether or not it is mandatory for the Board of Trustees of Ector County Independent School District to purchase all buses, tires and tubes used by it through the Board of Control of the State of Texas."

It is our understanding that the amount of local funds to be charged to the Ector County Independent School District (S.B.116, Art.VI, Sec.5) toward financing its minimum foundation program, when added to the

amount of the State and County Available School Funds to be realized by the district, produces a sum sufficient to finance the entire cost of its Foundation School Program for the 1949-1950 school year. This sufficiency of the district's local fund assignment coupled with its State and County Available Funds (Art.VI, Sec.1b) renders the district ineligible this year for any State money appropriated for purposes of Senate Bill 116. It is clear, therefore, that the Ector district will not participate in the Foundation School Fund appropriated by the 51st Legislature in Senate Bill 117 to finance the minimum foundation school program.

Section 3 of Article V, Senate Bill 116, 51st Legislature, (codified as Art.634 (B) in Vernon's Civil Statutes) provides in part in paragraph 1:

"All motor vehicles used for transporting school children, including buses, bus chassis, and bus bodies, tires and tubes, purchased for or by any school district participating in the Foundation School Program, shall be purchased by and through the Board of Control . . ."

Paragraph 2 provides in part:

"Such motor vehicles, including buses, bus chassis, bus bodies, tires and tubes, shall be purchased on competitive bids under such rules and regulations as may be made by the Board of Control . . ."

Paragraph 3 provides:

"Any such buses, owned by any county or school district, which are to be sold, traded in, or otherwise disposed of, must be disposed of either by the Board of Control, or by the County School Board of the school district under such rules and regulations as the Board of Control may provide, and the sale price or trade-in value of any such buses shall be considered in determining eligibility for transportation grants."

Paragraph 4 provides:

"Compliance with this Section shall be

a condition precedent to participation in the Foundation School Fund, and any school district failing or refusing to comply with the terms and conditions of this Section shall be ineligible to share in the Foundation School Fund for one year from the date of such failure or refusal or such violation of the terms hereof."
(Emphasis added throughout)

That part of paragraph 1 requiring compliance by all districts "participating in the Foundation School Program," when considered apart from other provisions in Section 3, would perhaps warrant the construction that Section 3 was meant to apply to every school district in Texas. For in a real sense every school district, by virtue of the provisions of Senate Bill 116, is required to expend its efforts toward providing at least the minimum foundation program established by that Act. A.G. Opinion V-921.

But considering that clause, in its relation to the spirit and purpose of the other quoted provisions of Section 3, we think Section 3 (Art. 634(B) V.C.S.) was intended to apply only to school districts which are participating in the Foundation School Program in both a cooperative and monetary sense. It applies only to those districts which are participating in the Foundation School Fund promised in Senate Bill 116 and provided in Senate Bill 117. Had the Legislature meant Section 3 to apply to every school district in Texas, it could have so provided by deleting from paragraph 1 the modifying clause in question.

The spirit and purpose of Section 3 as a whole, we think, is to require every school district participating in Foundation School Funds (part of its costs of operation involving transportation grants) to purchase its school buses, tires and tubes, et cetera, through one agency, the State Board of Control, on a competitive bid basis, to the end that such districts shall realize full value for the money they acquire through Foundation School Fund participation. The Legislature's primary concern in its enactment of Section 3 is that costs of transportation of public school scholastics be minimized by purchase of necessary bus equipment and repairs at the lowest cost whenever the district is financed in part by Foundation School Fund moneys.

The bus purchasing provisions of House Bill

295, the State Equalization law for the 1947-1949 bien-
nium, were made applicable only to State aid districts
under that law. In similar but less certain language,
the bus purchasing provisions in Senate Bill 116 are
made applicable and are mandatory only as to school dis-
tricts receiving State aid from Foundation School Funds.

But all school districts, whether they are to
receive Foundation School Funds or not, may avail them-
selves of savings afforded through purchase of their
school buses, etc., through the facilities of the Board
of Control in the manner set out in Section 3 of Arti-
cle V of Senate Bill 116.

SUMMARY

Under Section 3 of Article V of Senate
Bill 116, 51st Legislature, a school dis-
trict which is not eligible to participate
in Foundation Program Funds provided in Se-
nate Bill 117, 51st Legislature, is not re-
quired to purchase its school buses, bus
equipment, tires, and tubes through the
State Board of Control. Art. 634 (B), V.C.
S., as amended.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

CEO:mw

By *Chester E. Ollison*
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APPROVED

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